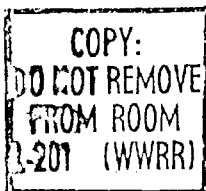


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ASSEMBLY**

THIRTY-FIRST SESSION

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SIXTH COMMITTEE
68th meeting
held on
Thursday, 9 December 1976
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SUMMARY RECORD OF THE 68th MEETING

DEC 20 1976

Chairman: Mr. MENDOZA (Philippines)

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14 December 1976
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The meeting was called to order at 11.05 a.m.

AGENDA ITEM 108: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS NINTH SESSION (A/31/17; A/C.6/31/5 and Add.1; A/C.6/L.13 and Corr.1 (Russian only), L.14 and Corr.1 and 2 (French only), L.15, L.17/Rev.1, L.19; TD/B/C.4/148, 153) (continued)

Draft resolution A/C.6/31/L.13

1. Mrs. LOPEZ (Philippines), speaking on behalf of the sponsors, introduced draft resolution A/C.6/31/L.13 concerning the UNCITRAL Arbitration Rules, which invited the General Assembly to lend its moral authority to a worthy proposal, namely that disputes arising in the context of international commercial relations should be settled by arbitration, with special reference to the UNCITRAL Arbitration Rules. The draft resolution was non-controversial, since it required no action or decision by the General Assembly beyond recommending the use of those Rules in the settlement of disputes arising in the context of international commercial relations. It should be remembered that the Arbitration Rules had been formulated after extensive consultations with the regional economic commissions, arbitral institutions and centres of international commercial arbitration and had been well received by all who had considered them, including such bodies as the Asian-African Legal Consultative Committee. The fact that UNCITRAL had adopted the Rules by consensus amply demonstrated their wide acceptance.

2. She announced that Finland, Greece, Indonesia, Italy, Japan and Kenya had joined the sponsors of draft resolution A/C.6/31/L.13, which she hoped would be adopted by consensus.

3. Mr. LE GOURRIEREC (France) said that his delegation wished to join the sponsors of draft resolution A/C.6/31/L.13.

4. The CHAIRMAN said that, if there was no objection, he would take it that draft resolution A/C.6/31/L.13 was adopted by consensus.

5. It was so decided.

Draft resolution A/C.6/31/L.14

6. Mrs. LOPEZ (Philippines), speaking on behalf of the sponsors, introduced draft resolution A/C.6/31/L.14 and said that in form and substance it was essentially similar to the resolutions adopted by the Committee on earlier UNCITRAL reports. The draft simply contained a formal endorsement of the fine work done by UNCITRAL at its ninth session and provided authority for the extension of its mandate. There were, however, two questions in the resolution which deserved special mention. One was contained in paragraph 10 (b), in which the dates of commencement and termination of the terms of office of members of UNCITRAL would be altered to

(Mrs. Lopez, Philippines)

correspond better with the schedule of sessions, and paragraph 10 (c), which authorized Governments of Member States which were not members of UNCITRAL, where they so requested, to attend the sessions of UNCITRAL and its Working Groups as observers. Those two measures would contribute to a further improvement of the efficiency of UNCITRAL's work and widen its contacts with Member States.

7. She announced that Finland, Indonesia and Kenya had joined the sponsors of draft resolution A/C.6/31/L.14, which she hoped would be adopted by consensus.

8. The CHAIRMAN said that, if there was no objection, he would take it that draft resolution A/C.6/31/L.14 was adopted by consensus.

9. It was so decided.

10. Mr. FIFOOT (United Kingdom), explaining his vote on draft resolution A/C.6/31/L.14, said that his delegation supported the work of UNCITRAL and until the previous year had voted for resolutions similar to that which had just been adopted. However, paragraph 7 of that draft referred to certain resolutions adopted by the General Assembly at its sixth and seventh special sessions which, in its view, were unrelated to UNCITRAL's work. In informal consultations with the sponsors of the draft resolution his delegation had requested that that reference be omitted, but its request had not been taken into account. If draft resolution A/C.6/31/L.14 had been put to the vote, his delegation would have had to abstain.

Draft resolution A/C.6/31/L.17/Rev.1

11. Mr. KURUKULASURIYA (Sri Lanka), speaking on behalf of the sponsors, introduced draft resolution A/C.6/31/L.17/Rev.1, and said that the Committee fully recognized the importance and value of the work done by UNCITRAL at its ninth session in finalizing the draft Convention on the Carriage of Goods by Sea. The draft Convention had been submitted to Member States for their views and observations, and also to other bodies of the United Nations system, notably UNCTAD, which had been closely associated with UNCITRAL in the preparation of the draft Convention. In draft resolution A/C.6/31/L.17/Rev.1 the General Assembly expressed its appreciation to UNCITRAL for the work it had done in preparing the draft Convention and to UNCTAD for the very important supporting role it had played in that regard. The resolution also requested the Secretary-General to convene a Conference on the Carriage of Goods by Sea in 1978. The date and venue of that Conference would be decided in the light of a number of considerations mentioned in paragraph 2 of the draft resolution. Another significant matter mentioned in the draft was the request to the Secretary-General to place before the Conference the comments, proposals, working papers and background papers already prepared by Governments, UNCITRAL and UNCTAD, together with any other documents that might be prepared prior to the convening of the Conference.

12. His delegation hoped that draft resolution A/C.6/31/L.17/Rev.1 would be adopted by consensus.

13. The CHAIRMAN said that, if there was no objection, he would take it that draft resolution A/C.6/31/L.17/Rev.1 was adopted by consensus.

14. It was so decided.

15. Mr. KOLESNIK (Union of Soviet Socialist Republic), explaining his vote, said that he would have preferred to see draft resolution A/C.6/31/L.17/Rev.1 put to the vote. Prompted by a spirit of compromise, however, he had not opposed its adoption by consensus. In informal consultations with the sponsors of the draft resolution he had requested that the wording of the thirteenth preambular paragraph be simplified. That paragraph contained observations which were unacceptable to his delegation and other delegations. However, his reservations did not denote a change of position on the part of his Government, in which connexion he referred to the comments made by the latter at the appropriate time.

16. Mr. ROSENSTOCK (United States of America) said that his delegation had participated in the consensus on the report on the work of UNCITRAL because it believed it was important to adopt a resolution on that subject by consensus, but it would have preferred to see a compromise on the text of document A/C.6/31/L.14, especially on the part of those countries which had insisted on inserting in that resolution material not directly related to the work of UNCITRAL, as had been done in the third preambular paragraph and operative paragraph 7.

17. With regard to draft resolution A/C.6/31/L.17/Rev.1 on the United Nations Conference on the Carriage of Goods by Sea, his delegation believed that it was consonant with the powers of the Secretary-General as chief administrative officer and believed that his skill and experience, which had already been demonstrated in the allocation of personnel to previous conferences, would also bear fruit on the current occasion.

18. Mr. BOSCO (Italy) said that his delegation had considered it oportune not to oppose the consensus in the Committee on draft resolution A/C.6/31/L.14 because, as it had already stated on a previous occasion, it believed that the work of UNCITRAL relating to the codification of international trade law was of high quality. He therefore associated himself with the praise for that work contained in the draft resolution. His delegation, however, wished to reaffirm the substance of its statement in explanation of vote on the occasion of the adoption of General Assembly resolution 3494 (XXX) and to express its reservations concerning paragraph 7 of draft resolution A/C.6/31/L.14, since the new international economic order should not be mentioned in a resolution on UNCITRAL, a highly specialized legal and technical body whose activities should remain uninvolved with economic policy.

19. Mr. HILGER (Federal Republic of Germany) recalled, in connexion with draft resolution A/C.6/31/L.14, that his delegation had abstained from voting on General Assembly resolution 3494 (XXX) because it had felt that the task of UNCITRAL was to codify international trade law and that it should not be used to obtain preferential treatment for any country. Accordingly, he expressed

(Mr. Hilger, Federal Republic of Germany)

- reservations concerning paragraph 7 of the draft resolution. In spite of that, his delegation had joined in the consensus in order to demonstrate its approval of the significant results achieved by UNCITRAL at its ninth session.
20. Mr. LE GOURRIEREC (France) said that his delegation had joined in the consensus on draft resolution A/C.6/31/L.17/Rev.1 but wished to reiterate, with regard to paragraph 4 (f), the reservations it had expressed during the consideration of the draft articles on succession of States in respect of treaties.
21. Mr. ALKAFF (Democratic Yemen) noted that draft resolution A/C.6/31/L.17/Rev.1 did not state clearly that the languages to be used at the Conference would be those used by the General Assembly and the Main Committees. Nevertheless, in view of what was said in document A/C.6/31/L.19 on the administrative and financial implications of the Conference, it was his understanding that Arabic would be one of the languages and he asked the Secretariat to take due account of that comment.
22. Mr. SHIGETA (Japan), explaining his delegation's vote on draft resolution A/C.6/31/L.14, said that Japan had joined in the consensus because it believed that the draft resolution was generally acceptable. However, it had some reservations regarding paragraph 7, and if that paragraph had been voted on separately his delegation would have voted against it.
23. Mr. OUCHENE (Belgium) said that his delegation welcomed the consensus on the draft resolution concerning the work of UNCITRAL, and congratulated the Commission on its achievements. It wished, nevertheless, to associate itself with the reservations expressed by the delegations of the United Kingdom, Italy, the Federal Republic of Germany, France and Japan concerning the reference in paragraph 7 to what had been decided at the sixth special session of the General Assembly.
24. Mr. BOJILOV (Bulgaria), Rapporteur, pointed out, in connexion with the report of the Committee to the General Assembly on the item concerning the work of UNCITRAL at its ninth session, that in previous years the Committee's reports had contained not only the texts of the proposals and amendments submitted and the resolutions adopted but also a summary of the views expressed in the Committee. If the Committee wished to continue that practice it would have to make a specific decision to that effect, in accordance with General Assembly resolution 2292 (XXII) concerning publications and documentation of the United Nations, bearing in mind that the inclusion of such a summary would require approximately 20 additional pages at a cost of \$5,000.
25. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished such a summary to be included in its report.
26. It was so decided.

AGENDA ITEM 112: IMPLEMENTATION BY STATES OF THE PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961: REPORT OF THE SECRETARY-GENERAL (A/31/145 and Add.1; A/C.6/31/L.16/Rev.1) (continued)

27. The CHAIRMAN drew attention to the draft resolution contained in document A/C.6/31/L.16/Rev.1.
28. Mr. KOLESNIKOV (Union of Soviet Socialist Republics), speaking on behalf of the sponsors, said that during the consultations on draft resolution A/C.6/31/L.16 a number of delegations had submitted proposals for minor changes, which had been accepted, resulting in the text contained in document A/C.6/31/L.16/Rev.1. Those amendments consisted of the addition of the words "and the diplomatic bag not accompanied by diplomatic courier" in the third preambular paragraph and of the words "if available and reads" in operative paragraph 5. Since the text before the Committee was the product of broad consultations, he hoped that it could be adopted by consensus.
29. Mr. GARDINER (United Kingdom) said that his delegation had carefully considered the draft resolution before the Committee, in the light of the statements made earlier in the week and bearing in mind the views of States recorded in document A/31/145 and Add.1. In its opinion, neither the former nor the latter justified the inclusion of some of the material that had been put forward in the draft resolution.
30. His delegation certainly hoped for the widest possible acceptance and strict performance of the obligations set out in the Vienna Convention on Diplomatic Relations of 1961, and it therefore supported paragraph 1. However, it had yet to see convincing evidence of problems in that matter which could not be solved by strict compliance with the law and by use of the adequate means of settling differences which were available.
31. With regard to the third and fourth preambular paragraphs, he pointed out that, of the 15 States whose views were recorded in document A/31/145 and Add.1, seven considered that the provisions of article 27 of the Vienna Convention of 1961, if correctly applied, covered the matter adequately.
32. The bland assertion, without the production of evidence, that there was a matter that warranted study did not justify the inclusion of the third and fourth preambular paragraphs and the specific references to the diplomatic bag and the diplomatic courier in operative paragraphs 3 and 4. Still less did it justify referring the matter to the International Law Commission. Paragraphs 4 and 5 were ill-considered because they were formulated so as to lead to expenditure of the effort and resources of the Commission in regard to a matter which had not been shown to deserve that degree of attention. To invite the International Law Commission to give its attention to that question, particularly when only 15 States had submitted written comments and nearly half of those considered that the matter did not require treatment of that kind, would in no way assist the Commission in progressing with its other work. His delegation did not consider that paragraph 4 was redeemed by the inclusion of the words "at the appropriate time".
33. His delegation believed that the matter could be disposed of by consensus with a step-by-step approach. If operative paragraph 4 were deleted and if operative

(Mr. Gardiner, United Kingdom)

paragraph 5 ended with the words "Member States", the possibility of referring the matter to the International Law Commission could be left over until it was decided whether such action would be justified.

34. His delegation could not support the present draft resolution without adjustments of the kind he had indicated.

35. Mr. ROSENSTOCK (United States of America) said he regretted that the desire to seek compromise and consensus on the item under discussion had been lacking in the Committee at the current session. The view of many delegations that the matter should not be referred to the International Law Commission had been ignored. That was an unnecessary departure from the traditions of the Committee on such items. He asked that the paragraphs of draft resolution A/C.6/31/L.16/Rev.1 should be voted on separately in accordance with rule 129 of the rules of procedure, so that his delegation might place on record its approval of other articles. If separate votes were taken, his delegation would vote against the third and fourth preambular paragraphs and operative paragraph 4, would vote in favour of the last preambular paragraph and operative paragraphs 1 and 2, and would abstain on operative paragraphs 3, 5 and 6.

36. Mr. KOLESNIK (Union of Soviet Socialist Republics) said that the arguments of the United Kingdom and United States representatives were not new and had already been refuted by the sponsors during the consultations. The delegations that were proposing the deletion of paragraph 4 said that they saw no need for any provisions other than those contained in the Vienna Convention, but if that were so they would not be expressing doubts with regard to the outcome of the International Law Commission's study. As to the alleged lack of interest in the question, he pointed out that the draft resolution had gained wide support and that its sponsors included countries all over the world. Naturally, written observations were expected from other States that wished to submit them, and provision was made for them to do so. He formally opposed the taking of separate votes on draft resolution A/C.6/31/L.16/Rev.1.

37. The CHAIRMAN announced that the delegation of Senegal had joined the sponsors of draft resolution A/C.6/31/L.16/Rev.1. In accordance with rule 129 of the rules of procedure of the General Assembly, before the United States representative's motion for division was voted upon, two members could speak in favour of the motion and two against.

38. Mr. GARDINER (United Kingdom) said that his delegation, like some others, had difficulty in accepting the wording of certain paragraphs of draft resolution A/C.6/31/L.16/Rev.1. It had been said that the objections to those paragraphs were premature, and that they had been refuted by some of the sponsors of the draft resolution. However, the number of supporters was not so great as to justify the assertion that the text of the draft resolution was generally acceptable. In the view of his delegation, it was premature to say that the objections to the text had been refuted. He therefore supported the request for separate votes on the paragraphs of the draft resolution.

39. Mr. MAAS GEESTERHAUS (Netherlands) said that during the debate his delegation had proposed some amendments which had not been accepted by the sponsors of the draft resolution. For that reason, it would like separate votes on one or two of the preambular paragraphs.
40. Mr. BIALY (Poland) said that his delegation opposed the United States motion. For the first time, the valuable tradition of adopting draft resolutions by consensus was not being followed at the current session. He regretted that departure from the spirit of compromise and co-operation, and feared that it would have an unfavourable effect on the future work of the Committee. He believed that draft resolution A/C.6/31/L.16/Rev.1 had had sufficient support during the debate, and hoped that it would be adopted by consensus.
41. Mr. MAIGA (Mali) said that draft resolution A/C.6/31/L.16/Rev.1, of which his delegation was a sponsor, had been the subject of lengthy negotiations and consultations with many delegations. Only two or three delegations had proposed amendments which might distort the spirit and the very letter of the draft resolution, and which had therefore been unacceptable. Consequently, his delegation opposed the motion for division.
42. The CHAIRMAN put to a vote the motion for a separate vote on each paragraph of draft resolution A/C.6/31/L.16/Rev.1.
43. The motion for division was rejected by 39 votes to 23, with 33 abstentions.
44. Mr. ROSENSTOCK (United States of America), speaking in explanation of his vote on draft resolution A/C.6/31/L.16/Rev.1 as a whole, said his delegation regretted that it had not been given the opportunity to vote in favour of operative paragraphs 1 and 2 or to incorporate its suggestions regarding some of the preambular paragraphs and operative paragraph 4. It would therefore be unable to abstain, as it wished, and would instead have to vote against the draft resolution as a whole.
45. Mr. MUDHO (Kenya) said that he would abstain from voting, since he would have preferred a vote to be taken paragraph by paragraph. The reason was that his delegation had some reservations regarding one of the preambular paragraphs and also regarding the advisability of referring the question for study to the International Law Commission at the present time. Otherwise, his delegation would have voted in favour of the draft resolution as a whole.
46. The CHAIRMAN put to the vote draft resolution A/C.6/31/L.16/Rev.1.
47. The draft resolution was adopted by 72 votes to 2, with 19 abstentions.
48. Mr. FIFOOT (United Kingdom), speaking in explanation of his vote, said that if separate votes had been taken his delegation would have voted against certain paragraphs and would have abstained on the draft resolution as a whole. The surprising refusal of the Committee to agree to a vote by division when there had not been sufficient negotiations on the text had left his delegation no alternative but to vote against the draft resolution as a whole.

49. Mr. MUSEUX (France) said that his delegation had voted in favour of the draft resolution because it felt that the Vienna Convention on Diplomatic Relations of 1961 was a very important instrument for the development of relations among States and for international co-operation. It therefore believed that serious consideration should be given to the problems which existed in the view of some delegations with regard to certain aspects of its implementation. Of particular importance in that respect was paragraph 3 of the draft resolution, which invited States to submit or to supplement their comments and observations on those problems. It was in that context that he interpreted paragraph 4, requesting the International Law Commission to study the question, since his delegation felt that the Commission should not begin to study it until it had received more observations and comments from Governments.

50. Mr. BROMS (Finland) said that his delegation had voted in favour of the draft resolution in a spirit of compromise and hoped that the International Law Commission would solve the problem in a satisfactory manner. In view of the Commission's heavy work programme and the fact that only 15 countries had submitted written comments on the subject, his delegation would have preferred that the Committee should reconsider it, with the help of a working group, at the thirty-third session, and that the draft resolution should leave open the possibility of referring the question to the Commission later if the Committee was unable to reach a satisfactory solution.

51. Mr. HELLNERS (Sweden) explained that his delegation had abstained in particular because of its objections to operative paragraph 4, since it felt that the question should not be referred to the International Law Commission at the present time. In its view, not enough comments had yet been received from States, and in addition the Commission had more urgent matters on its agenda.

52. Mr. LANG (Austria) said that his country was one of the few which had submitted comments in accordance with General Assembly resolution 3501 (XXX). The observations of his Government could therefore be found in document A/31/145. In his view, article 27 of the Vienna Convention on Diplomatic Relations of 1961 adequately regulated the question of the diplomatic courier. Since, furthermore, the International Law Commission had a very heavy work programme, his Government would have preferred the draft resolution to confine itself to a further request for comments from Governments. Those considerations had led his delegation to abstain.

53. Mr. REID (Australia) said that his delegation had had to abstain because separate votes, paragraph by paragraph, had not been allowed. He particularly regretted that the sponsors of the draft resolution had not carried out the necessary negotiations to arrive at a text which could have been adopted by consensus, in keeping with the tradition of the Sixth Committee. His delegation felt that the 15 replies so far received from Governments did not show the advisability of studying at the present time the question referred to in the fourth preambular paragraph, or that now was the time to request the International Law Commission to make such a study of the status of the diplomatic courier and the diplomatic bag, as was done in operative paragraph 4. In the view of his delegation, a consensus could have been reached if Governments had been given the opportunity to submit their comments before the decision was taken to refer the question to the Commission. Those were the reasons for his delegation's abstention.

AGENDA ITEM 109: REPORT OF THE COMMITTEE ON RELATIONS WITH THE HOST COUNTRY (A/31/26; A/C.6/31/6, A/C.6/31/26; A/C.6/31/L.20, A/C.6/31/L.21) (continued)

54. Mr. MATHIAS (India) said that the report of the Committee on Relations with the Host Country (A/31/26) gave a detailed account of the acts of violence committed against seven permanent missions to the United Nations, including the Indian Mission. Those acts had assumed a systematic character, and certain organizations had developed a technique of harassment which made it impossible to proceed against them legally.

55. His delegation expressed its appreciation of the measures promptly taken by the Federal and local authorities of the host country to protect the Indian Mission and its staff and understood that the constitutional right to certain freedoms imposed limits on the possibility of the authorities' taking preventive action. However, that could not be an excuse for failure to fulfil international obligations. The host country must continue to explore all possible means of ensuring that permanent missions and their staff were able to function in conditions of security and free of any harassment. That undoubtedly called for extraordinary measures, and the host country must keep under constant review the question whether existing Federal laws and the laws of New York State were adequate for that purpose. Although the host country deserved appreciation for its efforts, it should be urged to intensify all necessary measures to protect the missions and to prevent a repetition of criminal incidents. His delegation considered that there was merit in the draft resolutions submitted in connexion with the item under discussion (A/C.6/31/L.20 and A/C.6/31/L.21), and hoped that their sponsors could produce a consolidated text which would be adopted by consensus.

56. Mrs. BARISH (Costa Rica) said that her delegation had held consultations with other delegations regarding the possibility of submitting a consolidated draft resolution which could be adopted by consensus. The preamble would be identical with the preamble of General Assembly resolution 3498 (XXX) of 15 December 1975. The operative part would reproduce word for word the paragraphs which comprised chapter IV of the report of the Committee on Relations with the Host Country (A/31/26), or, in other words, the recommendations to the General Assembly.

57. The CHAIRMAN announced that Botswana, Grenada, Uruguay and Zaire had become sponsors of draft resolution A/C.6/31/L.21.

The meeting rose at 12.40 p.m.